

MINUTES OF MEETING  
SOUTHEAST CASS WATER RESOURCE DISTRICT  
CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
OCTOBER 14, 2011

The Southeast Cass Water Resource District met on October 14, 2011, at 9:30 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Thomas L. Fischer, Chairman; Mark Brodshaug, Manager; Dan Jacobson, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Diane Pochardt, Administrative Assistant; Sean M. Fredricks, Attorney for the Board; Chad Engels, Brett Bailly and Lyndon Pease, Engineers for the Board; and those whose names appear on the attached roster.

**Minutes**

It was moved by Manager Brodshaug and seconded by Manager Jacobson and unanimously carried to approve the minutes of the September 23 and 30, 2011, meetings, as presented.

**Approval of agenda order**

It was moved by Manager Jacobson and seconded by Manager Brodshaug to approve the order of the amended agenda. Upon roll call vote, the motion carried unanimously.

**Wild Rice River Estates bank stabilization**

Roger Hagen and Dean Hornbacher met with the Board regarding the Wild Rice River Estates bank stabilization project. Mr. Hornbacher reported he has the signed petition, and \$40,000 deposit from the property owners, but the property owners decided to wait until they know whether the State Water Commission (SWC) approves cost share for the project at its meeting on October 31, 2011.

**Drain #45 – request from Industrial Builders, Inc. for a water storage area on drain right-of-way**

Paul Diederich discussed concerns about specific requirements in the draft license agreement for purposes of locating a water storage area on Drain #45 right-of-way. Sean Fredricks proceeded to review the document. Concerns about the stability of the Sheyenne-Maple Flood Control District #1 tieback levee were discussed.

It was moved by Manager Brodshaug and seconded by Manager Jacobson to authorize the Water Resource District Attorney to revise paragraphs 5, 8, and 9 of the license agreement with Industrial Builders, Inc. for construction of a water storage area on Drain #45 right-of-way. Upon roll call vote, the motion carried unanimously.

### **Discussion with Fargo, West Fargo and Horace Planners about setbacks and river dike issues**

Larry Weil, City of West Fargo Planning Director; Jim Hinderaker, City of Fargo Senior Planner, met with the Board to discuss current land use and development issues, including setback requirements. Chairman Fischer specifically mentioned the area being developed along the Sheyenne River, south of 32nd Avenue South, and the parking lot west of the river, north of I-94. He said setbacks are needed, even in protected areas to prevent the need for future property buyouts.

Mr. Hinderaker informed the Board the Fargo City Commission has been working on the matter and is likely to adopt a new ordinance to address the issues. The city also has a “no disturbance” area to help prevent the use of sprinkler systems and the removal of vegetation on riverbanks.

Mr. Weil said the engineer for the City of West Fargo looked to the Corps of Engineers for guidance with regard to setting standards for setback requirements. Before building within the 100’ setback, a geotechnical study is required. He said they are open for suggestion on the matter.

Chairman Fischer thanked Mr. Hinderaker and Mr. Weil for attending the meeting and encourage them to use setbacks, to be prudent and use common sense, in addition to using scientific information when platting and developing areas within their jurisdictions. Manager Brodshaug suggested using the same regulations along legal drains.

### **Round Hill Sanitary Sewer Improvement District No. 2010-1**

Brett Bailly updated the Board on the Round Hill Sanitary Sewer Improvement District No. 2010-1 project. Master Construction, Co., Inc. hired another contractor to help on the project. Mr. Bailly said the project will be completed in 2-3 weeks.

### **Sheyenne- Maple Flood Control Projects**

It was moved by Manager Jacobson and seconded by Manager Brodshaug to approve the Purchase Agreement with James E Martin, for property in the SW 1/4 of Section 31 in Barnes Township. Upon roll call vote, the motion carried unanimously.

### **Drain #53 Drainage and Flood Control Improvements**

Lee Beauvais updated the Board on the Drain #53 Drainage and Flood Control Improvements. Kyle Volk reviewed details of Change Order No. 2 and informed the Board that the contractors on this project and on Drain #27 will be finishing things up to prepare for seeding.

### **Amber Plains Subdivision drainage plan**

Chairman Fischer sent a letter to Ron Strand, Inspections Administrator for the City of Fargo, requesting partnership in the development of a drainage plan for Amber Plains Subdivision.

Property owners from the development were present to discuss possible drainage options with the Board. Lyndon Pease reviewed proposals for storm sewer improvements in Amber Plains 2nd Addition. The property owners are currently discussing those options. Mr. Pease will coordinate with the City of Fargo and the property owners and will report on their decision at a future Water Resource District meeting.

### **Jeff Philipp ring dike in the NW 1/4 of Section 13 in Warren Township near Drain #21**

It was moved by Manager Brodshaug and seconded by Manager Jacobson to approve payment for a 24" intercept culvert with a steel flapgate, to be installed by Jeff Philipp, into Drain #21 in the NW 1/4 of Section 13 in Warren Township and that Moore Engineering, Inc. provide construction details at the time of installation. Upon roll call vote, the motion carried unanimously.

### **Dike Complaint from Ron Cossette against Larry Richard and Jeff Fuchs in the NW 1/4 of Section 3 in Pleasant Township along Cass County Highway 16**

The Board next considered Ron Cossette's *Dike or Dam Complaint* against Larry Richard and Jeff Fuchs. Mr. Cossette submitted his Complaint dated September 28, 2011, in which he contended Mr. Richard and Mr. Fuchs constructed an illegal dike or dam in the NW 1/4 of Section 3 in Pleasant Township, Cass County, North Dakota, in approximately September of 2011. Mr. Fredricks conducted a deed search and found that Larry and Susan Richard are the record title owners of that portion of the NW 1/4 of Section 3 where the structure is located.

Following its receipt of the Complaint, the Board directed Moore Engineering, Inc. to investigate the dam or dike. Mr. Beauvais conducted an investigation, including review of LiDAR data and other maps and photos, and he indicated the structure ties into Cass County Highway 16. Mr. Beauvais further indicated the structure qualifies as a "low-hazard dam" under Section 89-08-01-01(10) of the North Dakota Administrative Code because the structure is an artificial barrier or obstruction across a ditch intended to impound, retain, obstruct, or divert water; further, the structure is in a rural or agricultural area, and failure of this particular dam would only result in damage to ag land or the adjacent county road. Mr. Cossette alleged the participants constructed the structure in 2011, and, therefore, the law in effect at the time of its construction applies. Under North Dakota Century Code §§ 61-16.1-38 and 61-16.1-53, the 50 acre-feet standard applies to this particular structure, and that standard will determine whether or not construction of this low-hazard dam required a permit.

Lee Beauvais indicated that in his opinion, this low-hazard dam is not capable of retaining, obstructing, or diverting more than 50 acre-feet of water. With that in mind, the construction participants were not required to obtain a permit under Section 61-16.1-38. Further, in the absence of any permitting requirement, the Board lacks jurisdiction to direct the construction participants to remove the dam, and the Board has no choice but to dismiss the Complaint.

It was moved by Manager Brodshaug and seconded by Manager Jacobson to dismiss the Complaint filed by Ron Cossette against Larry Richard and Jeff Fuchs for construction of a dam or dike in the NW 1/4 of Section 3 in Pleasant Township because it is not capable of retaining, obstructing or diverting more than 50 acre-feet of water and does not require a permit. Upon roll call vote, the motion carried unanimously. The Board will prepare a Notice of Decision and will provide a copy of the notice to all parties of record.

**Dike applications- properties located along Drain #27**

Manager Brodshaug moved and Manager Jacobson seconded to recommend approval of the following dike applications to the State Engineer.

- Evangelical Lutheran Good Samaritan Society in the SE 1/4 SE 1/4 of Section 28 in Barnes Township;
- Fargo Park District in the SE 1/4 SW 1/4 of Section 26 in Barnes Township; and
- Ulteig Engineers, Inc. in the SW 1/4 SW 1/4 of Section 26 in Barnes Township.

Upon roll call vote, the motion carried unanimously.

**Utility Permits for Idea One Telecom to install telephone cable through Drain #10 at 1st Avenue North and 12th Avenue North and Cass County Electric Cooperative Inc. to install underground electric power cable in conduit on Drain #27 right-of-way in Section 5 in Stanley Township**

Manager Brodshaug motioned and Manager Jacobson seconded to approve the following *Utility Permits*:

- Idea One Telecom to install telephone cable through Drain #10 at 1st Avenue North;
- Idea One Telecom to install telephone cable through Drain #10 at 12th Avenue North; and
- Cass County Electric Cooperative Inc. to install underground electric power cable in conduit on Drain #27 right-of-way in Section 5 in Stanley Township.

Upon roll call vote, the motion carried unanimously.

**Correspondence from the West Fargo Planning Department**

The Board directed the Secretary Treasurer to notify the West Fargo Planning Department as follows:

- Midland Third Addition in the NE 1/4 of Section 5 in Barnes Township – no comment; and

- North Pond at the Preserve Second Addition in the NW 1/4 of Section 20 in Barnes Township – that the development should ensure the integrity of the Sheyenne-Maple Flood Control District #1 tieback levee is not threatened.

### **Bills**

It was moved by Manager Brodshaug and seconded by Manager Jacobson to approve payment of Checks #9997 through #10018, Check #10025 and the electronic funds transfer, as presented. Upon roll call vote the following Managers voted in favor: Fischer, Jacobson and Brodshaug. The Chairman declared the motion passed.

### **Adjournment**

There being no further business to be considered by the Board, it was moved by Manager Jacobson, seconded by Manager Brodshaug and unanimously carried to adjourn the meeting.

APPROVED:

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Thomas L. Fischer  
Chairman

ATTEST:

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Carol Harbeke Lewis  
Secretary-Treasurer